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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,329	11/25/2003	Marinus A. Doomernik	AVER.P03204USA	6509
7590 08/04/2004 Todd R. Tucker Renner, Otto, Boisselle & Sklar, LLP Nineteenth Floor 1621 Euclid Avenue Cleveland, OH 44115-2191			EXAMINER EGAN, BRIAN P	
			ART UNIT 1772	PAPER NUMBER
DATE MAILED: 08/04/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/722,329

Applicant(s)

DOOMERNIK, MARINUS A.

Examiner

Brian P. Egan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities: in line 5 of the claim, the limitation is grammatically unclear. The examiner suggests inserting the word "the" between "visible indicia layer on" and "other side." Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. It is unclear whether the applicant is claiming that the outer film and carrier film are a coextruded structure or whether each of the outer film and carrier film are independent multilayered coextruded films. Proper clarification and/or correction are required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3, 5-9, and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rackovan et al. (#6,436,496) in view of Will et al. (#5,766,795).

Rackovan et al. teach a multilayered label for a battery comprising a shrinkable outer film (Fig. 2, #22) forming the outermost layer of the label, a shrinkable carrier film (Fig. 2, #21) having a first adhesive layer ("tie layer" – Fig. 2, #24) on one side confronting the outer layer and bonding the carrier layer to the outer layer and an outwardly visible indicia layer on the other side (Fig. 2, #25), and a second adhesive layer adjacent the indicia layer for bonding the label to the battery (both the combination of layers 26-28 or layer 28 taken independently in Fig. 2 may be defined as a "second adhesive layer" bonding the label to the battery). At least one of the outer film and carrier film are made of polypropylene (Col. 3, lines 64-66; Col. 6, lines 36-45). The indicia layer includes a non-metallic pigment (Col. 7, lines 17-61). The multilayered label may be prepared by coextruding the multilayered structure (Col. 9, lines 54-58). The outer film has a thickness in the range of about 25 to 25 microns (Col. 8, lines 35-45: since the core layer is 2 to 20 times thicker than the outer skin layer and the core layer is 0.6-4 mils thick (i.e., 15.24-101.6 microns thick), the outer skin layer is between 0.762 and 50.8 microns thick) and the carrier film has a thickness in the range of about 25 to 50 microns (Col. 4, lines 1-3). The label further includes a release liner confronting the second adhesive layer (Fig. 2, #29). Rackovan et al. teach that the films in the multilayered structure may be directionally oriented as is known in the prior art (Col. 9, lines 27-29). Therefore, absent unexpected results, it would have been obvious to one of ordinary skill in the art to mono-axially orient the carrier film and to balance the orientation of the outer film. Although Rackovan et al. do not explicitly state that the adhesive layers and the carrier and outer films are transparent, the aforementioned layers are implicitly transparent since the print layer which is below the majority of these layers must be viewable by the battery user. Furthermore, it was notoriously well known in the art at the time

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Applicant's invention was made to provide multilayered battery labels with transparent labels to facilitate viewing of underlying indicia layers as evidenced by Will et al. (see Abstract).

Therefore, even if not implicit per se, it would have been obvious to one of ordinary skill in the art to provide transparent adhesives and shrinkable films in Rackovan et al. in order to facilitate viewing of the underlying indicia layer.

6. Claims 2, 4, 10-13, and 17-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rackovan et al. in view of Will et al., and further in view of Bailey (#5,760,588).

Rackovan et al. and Will et al. teach a multilayered battery label as detailed above. Rackovan et al. further teach that the label may further include circuitry such as that used to determine the strength of the battery charge (Col. 10, lines 1-14) but fail to explicitly teach the intricacies of the circuitry (i.e., the use of thermochromic and conductive material layers). The aforementioned prior art also fails to teach the use of PVC or polyester shrinkable substrates.

Bailey teaches a multilayered battery label with battery tester circuitry and shrinkable layers. With regards to the shrinkable layers, Bailey teaches a functional equivalence between polypropylene, polyester, and PVC (Col. 8, lines 54-64). Thus, it would have been obvious to one of ordinary skill in the art to modify any shrinkable layer in the aforementioned prior art with any of polypropylene, polyester, and PVC. With regards to the battery tester circuitry, Bailey teaches the use of a thermochromic indicator material (Fig. 2, #24) in thermal contact with a conductive layer (Fig. 2, #18). As demonstrated in Fig. 7 of Bailey, the battery tester circuitry is wrapped in such a way that the battery power indicator is situated between two portions of the film. The multilayered film overlaps at a connection point in Fig. 7 although it is unclear whether the width of this connection point is equal to the width of the conductive layer.

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However, it would have been obvious to one of ordinary skill in the art to modify the width of the overlap joint such that it is equal to the width of the conductive layer since such a modification would have involved a mere change in size. A change in size is generally recognized as being within the level of ordinary skill in the art absent demonstration of unexpected results. *In re Rose*, 105 USPQ 237 (CCPA 1955). It would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have combined the teachings of the aforementioned prior art and Bailey since each of the aforementioned references are analogous insofar as being directed at shrinkable battery labels.

Therefore, it would have been obvious to have modified the aforementioned prior art with known battery tester circuitry and arranged the circuitry within the film as taught by Bailey in order to provide an improved battery tester in the label substrate. Since the positioning of the circuitry in Rackovan et al. is non-limiting (see Col. 10, lines 4-9), Rackovan et al. would be motivated to align the circuitry and label as detailed by Bailey.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Egan whose telephone number is 571-272-1491. The examiner can normally be reached on M-F, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


BPE 7/28/04


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

8/3/04